

From The Bench

legal news of interest

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Expansion of the Collateral Source Rule in Louisiana

by Michael P. Corry

Louisiana has long recognized the Collateral Source Rule. Under the Collateral Source Rule, a tortfeasor may not benefit, and an injured plaintiff's tort recovery may not be reduced, because of monies received by the plaintiff from sources independent of the tortfeasor's procurement or contribution.¹ There are several reasons Louisiana courts support the Collateral Source Rule. First, the reason most often stated is the defendant should not gain an advantage from outside benefits provided to the plaintiff independent of any act of the defendant.² Second, it is clear the Collateral Source Rule promotes tort deterrence and accident prevention.³ Finally, absent the Collateral Source Rule, victims would be dissuaded from purchasing insurance or pursuing other forms of reimbursement available to them.⁴

The Louisiana Supreme Court recently addressed the Collateral Source Rule in Louisiana and its application to an environmental cleanup case. In *Louisiana Dept. of Transportation & Development v. Kansas City Southern Railway Co.*,⁵ the Louisiana Department of Transportation and Development (DOTD) brought an action against previous property owners for cost of removal of allegedly hazardous material discovered during construction of an interstate highway. The DOTD spent several million dollars to remove environmental pollution at a construction site for Interstate 49 in Shreveport, Louisiana. The United States Government, through the Federal Highway Administration (FHWA), thereafter reimbursed the DOTD ninety percent (90%) of the remediation cost. The DOTD sued, among others, the Kansas City Southern Railway Company (Kansas City Southern) to recover the cleanup costs. The DOTD sought reimbursement of one hundred percent (100%) of the cleanup costs, not just the ten percent (10%) which the Federal Highway Administration did not reimburse.

The lower courts held that DOTD's action was limited to the ten percent (10%) of cleanup costs it had actually incurred, and that the DOTD could not recover the portion of the costs reimbursed to DOTD by the FHWA. It was the DOTD's position the Collateral Source Rule prevented Kansas City Southern from obtaining a reduction in liability for the DOTD's removal cost, in large measure funded by FHWA. Kansas City Southern argued the courts have applied the Collateral Source Rule only in limited context, specifically, tort situations where insurance or other proceeds purchased by the victim were involved. The lower courts found the Collateral Source Rule, a tort based concept with a limited application, did not apply in this environmental cleanup dispute which "does not involve insurance, tort deterrence or accident prevention."



The Louisiana Supreme Court reversed the lower courts' rulings. The Supreme Court found the Collateral Source Rule applies in cases arising under the Louisiana Environmental Quality Act (LEQA), at least where a damaged party is seeking reimbursement only for remediation expenses. The court stated that "if, after a trial on the merits, it is found to be legally responsible for some portion of the contamination present at the construction site, Kansas City Southern cannot be exonerated from paying the full consequences of its act simply because DOTD independently obtained reimbursement in large part from FHWA for cleanup costs incurred."

The court also noted that "the logic supporting application of the Collateral Source Rule is equally persuasive whether we are dealing with a defendant polluter under the Louisiana Environmental Quality Act, or a traditional 'tortfeasor' whose liability arises under Louisiana Civil Code Article 2315, or other general tort law."

The court stated, "a wrongdoer's liability should not be reduced by the amount of collateral source payments to an injured plaintiff, even where the nature of the collateral source is a public relief provided to the plaintiff by application of federal or state law." The court was faced with choosing between allowing DOTD a possible windfall, or allowing the liability of a potential wrongdoer under the Louisiana Environmental Quality Act to be reduced by the ninety percent (90%) federal share. The court found the former option was preferable and was consistent with existing Louisiana jurisprudence.

Accordingly, the collateral source has been expanded in Louisiana to include environmental cleanup cases.

¹ *Warren v. Fidelity Mutual Ins. Co.*, 99 So.2d 382 (La. App. 1st Cir. 1957).

² *Bryant v. New Orleans Public Service, Inc.*, 406 So.2d 767 (La. App. 4th Cir. 1981), *affirmed*, 414 So.2d 322 (La. 1982).

³ *Suhor v. Lagasse*, 2000-1628 (La. App. 4th Cir. 9/13/00); 770 So.2d 422.

⁴ *Bryant*, 406 So.2d at 769.

⁵ 2002-2349 (La. 5/20/03); 846 So.2d 734.



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